

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:**

Request that the Board adopt emergency Board Order FH-26-13(E) and authorize public hearings for Board Order FH-26-12, proposed rules affecting ch. NR 25 related to amending Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement.

**FOR: December 2013 Board meeting**

**PRESENTER'S NAME AND TITLE:** Peter Stevens, Lake Superior Fish Team Supervisor

**SUMMARY:**

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior.

Lake trout harvest limits have been negotiated among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and need to be put in place by emergency rule for the 2013-14 open season (November 28, 2013 to September 30, 2014) and by permanent rule for subsequent seasons. The Wisconsin State-Tribal Technical Committee, which is made up of Department, Red Cliff, and Bad River biologists, have recommended a reduction in overall lake trout harvest.

A permanent rule would put in place reduced harvest limits in order to update administrative code that currently references 2009 harvest limits. However, the Department and tribes will again discuss the need for harvest limit changes in 2014.

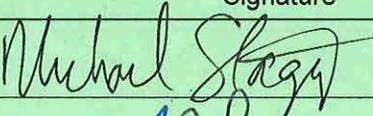
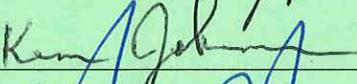
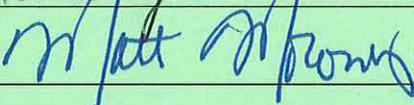
The rules would:

- Modify the annual commercial fishing harvest limit for lake trout on Lake Superior.
- Allow the department to enforce a reduced recreational fishing daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest exceeds a percentage of the total allowable harvest. Lake trout harvest limits are created for both commercial and recreational fishers in Lake Superior in order to manage the total population.

**RECOMMENDATION:** That the Board adopt emergency Board Order FH-26-13(E) and authorize public hearings for Board Order FH-26-12.

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> background memo   | <input checked="" type="checkbox"/> Attachments to background memo    |
| <input type="checkbox"/> Statement of scope   | <input type="checkbox"/> Governor approval of statement of scope      |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary   | <input checked="" type="checkbox"/> Board order/rule                  |

Approved by	Signature	Date
Mike Staggs, Bureau Director		11/15/2013
Ken Johnson, Administrator		11/20/2013
Cathy Stepp, Secretary		11/25/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: November 12, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on adoption of Board Order FH-26-13(E) and hearing approval for Board Order FH-26-12, relating to amending Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement.

**1. Subject of Proposed Rule:**

The proposed rules address Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement. Lake trout harvest limits were negotiated in October 2013 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code.

**2. Background:**

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by surveys conducted by the Department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, these classes were not as large as predicted. This combination of increased harvest and lower than predicted population size has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. A continued decline in lake trout population abundances necessitates the current harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

**3. Why is the rule being proposed?**

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The rules will reduce the annual commercial fishing harvest limit for lake trout on Lake Superior and authorize limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits.

The emergency rule is necessary to implement harvest limits for the 2013-14 lake trout commercial harvest season, which is open from November 28, 2013, through September 30, 2014. The permanent rule is necessary to update administrative code with the same reduced harvest limits. Current code

references 2009 harvest limits. However, the parties involved with negotiations of the State-Tribal Lake Superior Agreement will again discuss the need for harvest limit changes in 2014.

#### **4. Summary of the rule.**

The rules are necessary to implement lake trout commercial harvest limits. They reduce the annual commercial fishing harvest limit for lake trout on Lake Superior and place reduced bag limits on recreational fishing if the recreational lake trout harvest exceeds specified limits. The rule elements are a result of regular negotiations stipulated by the State-Tribal Lake Superior Agreement.

Section 1 of each rule puts in place a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest in a season exceeds 95% of the total allowable recreational lake trout harvest of 26,050 fish ( $26,050 \times 0.95 = 24,748$ ). If total lake trout harvest in a season exceeds 98% of the total allowable recreational harvest ( $26,050 \times 0.98 = 25,529$ ), a zero bag limit would be enforced and no fish could be harvested for the rest of the season. Recreational lake trout harvest is measured by department creel surveys during which staff gather harvest information directly from anglers. The open season for recreational lake trout harvest in Lake Superior is December 1 through September 30.

Section 2 of each rule reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior. The open season for commercial lake trout harvest in Lake Superior is November 28 through September 30.

#### **5. How does this proposal affect existing policy?**

These proposals sustain existing policy. Chapter NR 1.04 provides the guiding department policy related to harvest limits and quota allocations: "(4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas."

#### **6. Has Board dealt with these issues before?**

The Board has dealt with similar rules in the past to adjust lake trout harvest limits based on negotiations specified by the State-Tribal Lake Superior Agreement. The Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The full Agreement was last negotiated in 2005 and has been amended four times.

#### **7. Who will be impacted by the proposed rule? How?**

- State-licensed commercial fishers on Lake Superior
- Recreational fishers on Lake Superior
- Red Cliff Band of Lake Superior Chippewa
- Bad River Band of Lake Superior Chippewa

State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

## 8. Soliciting public input on economic impact synopsis

The fiscal estimate for emergency Board Order FH-26-13(E) is attached and did not require public comment at this time. A public hearing for the emergency rule will be held within 45 days of rule promulgation, and is expected to be held at the same time as the public hearing for the permanent rule.

The Department plans to hold one public hearing on permanent rule FH-26-12 in Bayfield, WI, in January 2014. The economic impact analysis (EIA) comment period for permanent Board Order FH-26-12 was held from October 25 to November 8, 2013. The EIA form is attached. The Department received two comments during the EIA comment period:

Halvorson Fisheries, LLC, (Bayfield, WI) responded with the attached letter. The following is a summary of their comments:

- In the years prior to 2013 we had received 1075 lake trout tags per license. In March of 2013, that number was reduced to 800 tags and footage was reduced by 26,442 feet of net. Based on this new proposal, each license would see cuts of an additional 300 tags and the loss of 20,000 feet more of gill net effort. The impact of this new proposal would almost certainly force us to lay off or let go employees, potentially lose clients to whom we supply fish and absolutely result in money loss in fish sales.
- The estimated dockside value of lake trout in the draft EIA is based on the fish prices in 2011, which were considerably lower than they are at present, or at any time in the past year. Furthermore, these estimates of the lake trout dockside value are not valid to our business, as we fillet all of our lake trout. Lake trout fillets, or fillets of any other type of fish, are far more profitable than the whole, dressed fish. Our business estimates a loss of \$15,000 based on the sale of lake trout fillets in 2013. This figure is just for our business with five licenses, and still is three times higher a loss than the numbers in the draft EIA for all ten state licenses! The proposed decrease in gill net footage would only amplify our business' profit loss. I calculate that a reduction of about 20,000 feet of gill net footage per license would result in a loss of 5000 pounds of whitefish and a current dockside value of \$10,000. Considering the five licenses within our business, we stand to lose around \$50,000 from the sale of whitefish. This figure is just a rough estimate based on an average of the prior years' catch, and is subject to how much fish is caught and the market value.
- Halvorson Fisheries would also be affected by cuts to tribal quotas. Numerous local restaurants depend on our business to supply them with Lake Superior lake trout and whitefish. In order to meet the demand for trout fillets from our restaurant trade and retail store, we must purchase lake trout from Native American fisherman. A reduction to tribal quota has the potential to decrease the amount of available lake trout to purchase by our business, making it impossible for us to meet the demands of restaurant orders and consumer requests. Again, our business would experience monetary loss, but so too would Native American fishermen who supply us with lake trout, and potentially the local restaurants that serve our products.
- The rule would not only result in profit loss for our business, but for other local businesses, persons employed in the fishing industry and quite possibly persons who rely on local tourism to make a living.

Red Cliff Band of Lake Superior Chippewa responded with the attached letters. The following is a summary of their comments:

- The Fiscal Estimate provided by the State is narrowly focused and largely underestimates the economic impact to Bayfield and Ashland Counties.

- When developing the fiscal estimate, only state harvest was considered, and even those calculations seem low. State fishermen harvested 170,770 lbs. of whitefish with gillnets in 2011. Whitefish wholesale averaged \$1.60/lb. through most of 2013, and the economic impact needs to consider current price structure. This would put the value of the 170,770 pound catch for whitefish caught in state gillnets at \$273,232, and this does not include the harvest from the trap net fishery by state license holders.
- The economic impact does not even attempt to address the impact to the tribal commercial fishery. In 2013, 100% of the tribal fishery in Wisconsin was by gillnet harvest. Because of the effort restrictions on gillnets that are based on the lake trout quota, a lake trout quota reduction will lead to severe reduction in tribal whitefish harvest. In 2011, Red Cliff harvested 377,407 pounds of whitefish and 74,536 pounds of lake trout. Bad River harvested 264,906 pounds of whitefish and 83,007 pounds of lake trout that same year.
- A true economic impact analysis cannot simply multiply pounds harvested by wholesale price per pound. The fishing industry circulates dollars throughout the counties through employment, dock fees, equipment purchases, fuel and maintenance costs, direct sales to restaurants, etc. The State's estimate that, "the exact estimate of economic impact is unknown, but is not expected to exceed \$50,000" is almost comical in its inaccuracy. Especially since the EIA doesn't even consider the loss of tourism dollars that would occur if the recreational fishery faced emergency closure.
- Estimating the direct economic costs should be undertaken through a focus group consisting of tribal fishermen, state fishermen, fish processors, retailers and biologists.

*Response from the Department for permanent Board Order FH-26-12:*

The Department thanks both Halvorson Fisheries, LLC, and the Red Cliff Band of Lake Superior Chippewa for their comments. We have added those comments to the EIA and will work with both groups as we move through the rule making process.

Comments received from these state and tribal commercial fishers assume the economic impact of the permanent rule is greater than the Department's estimate. The economic impact was estimated by the Department using available reported data from 2012 dockside values of lake trout and whitefish sales, as well as commercial fishing harvest reports submitted to the Department. Commercial fishers and tribes are not required to submit any additional economic information to the Department, therefore the estimate of minimal economic impact was the best analysis based on available data.

If the rule is not put in place, the estimate of negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

In addition, lake trout harvest limits were negotiated in October 2013 among the Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes are reflected in this rule. This State-Tribal Agreement amendment was agreed to by all parties. While negotiations do not preclude the Red Cliff Band from providing EIA comments, it was assumed that they were aware of the economic effects of the harvest limit when the Agreement amendment was made.

## **9. Environmental Analysis**

This is a Type III action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

## 10. Small Business Analysis

Based on data available to the Department, minimal impact is expected for businesses or business associations. The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout.

Economic impact comments were provided during the permanent rule (FH-26-12) economic impact analysis period suggesting the impact to small businesses would be greater than the Department's estimate. However, if the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

Halvorson Fisheries, LLC  
36240 County Highway J  
Bayfield, WI 54814  
(715) 742-3402  
November 5, 2013

Kate Strom Hiorns  
Bureau of Fisheries Management  
Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707

This letter is in reference to the Natural Resources Board Order FH-26-12. I, Maurine Halvorson, am writing to provide you with information as to how this order will impact our commercial fishing business. Halvorson Fisheries, LLC is owned and operated by our family of four: Dean, myself, and sons Mark and Clifford. Over thirty years ago Dean Halvorson founded the business, originally operating on his single fishing license. Our sons were raised in the fisheries and have chosen it as their livelihood. Halvorson Fisheries now holds five Wisconsin commercial fishing licenses on Lake Superior, each family member owning their own commercial license, with Clifford owning two. Our business has grown significantly in the past ten years. The acquisition of additional licenses and boats, along with our sons' tremendous knowledge of the fisheries has made it possible for us to grow. Our expansion has resulted in a large processing facility, a retail fish market and has allowed us to supply more local restaurants and clients with whitefish and lake trout fillets. Halvorson Fisheries not only supports our families, but employs nearly a dozen full, part-time and seasonal employees.

The first issue I would like to address is the proposed reduction in lake trout tags. In the years prior to 2013 we had received 1075 lake trout tags per license. In March of 2013, that number was reduced to 800 tags and footage was reduced by 26,442 feet of net. Based on this new proposal, each license would see cuts of an additional 300 tags and the loss of 20,000 feet more of gill net effort. With footage diminished further, I calculate that our boats would be able to fish for about twenty days at our normal efforts. That calculation is for all five of our licenses for just one period! In reference to the suggestion in Attachment A to shift to trap net fishing, our business already takes full advantage of the time period in which the law states that trap nets can be used (i.e. April - September). The impact of this new proposal would almost certainly force us to lay off or let go employees, potentially lose clients to whom we supply fish and absolutely result in money loss in fish sales.

The second issue I would like to address is the estimated dockside value of lake trout and whitefish in Attachment A. These estimates are based on the fish prices in 2011, which were considerably lower than they are at present, or at any time in the past year. Furthermore, these estimates of the lake trout dockside value are not valid to our business, as we fillet all of our lake trout. Lake trout fillets, or fillets of any other type of fish, are far more profitable than the whole, dressed fish. Attachment A states a 25%

reduction in income generated by lake trout sales, or around \$5000 for all ten state commercial licenses. However, our business estimates a loss of \$15,000 based on the sale of lake trout fillets in 2013. This figure is just for our business with five licenses, and still is three times higher a loss than the numbers in Attachment A for all ten state licenses! The proposed decrease in gill net footage would only amplify our business' profit loss. I calculate that a reduction of about 20,000 feet of gill net footage per license would result in a loss of 5000 pounds of whitefish and a current dockside value of \$10,000. Considering the five licenses within our business, we stand to lose around \$50,000 from the sale of whitefish. This figure is just a rough estimate based on an average of the prior years' catch, and is subject to how much fish is caught and the market value. However, it is significantly higher than the numbers in Attachment A. Also, the current market value of whitefish is forecasted to remain high. Clearly, the monetary loss that this new proposal would inflict upon our business far exceeds the economic impact analysis estimated by the State.

Halvorson Fisheries would also be affected by cuts to tribal quotas. Numerous local restaurants depend on our business to supply them with Lake Superior lake trout and whitefish. In order to meet the demand for trout fillets from our restaurant trade and retail store, we must purchase lake trout from Native American fisherman. A reduction to tribal quota has the potential to decrease the amount of available lake trout to purchase by our business, making it impossible for us to meet the demands of restaurant orders and consumer requests. Again, our business would experience monetary loss, but so too would Native American fishermen who supply us with lake trout, and potentially the local restaurants that serve our products.

It seems to follow that local tourism will be affected, at least somewhat, as a consequence of the proposed reductions to commercial state and tribal licenses, and more so due to reductions to recreational lake trout daily bag limits. Tourism contributes significantly to our sale of fresh fish fillets to local restaurants. Our retail store is small, but locally known and popular with tourists. Even with the current allocation of lake trout tags, we often have to decline requests for lake trout fillets. Further reductions to our supply of lake trout has the potential to turn away even more consumers. Clearly, this would not be good for any business. With respect to the recreational and sport fishermen who generate considerable income for our local economy, I can only assume that they will go elsewhere to fish for lake trout, taking their tourism dollars with them.

In today's poor economy, and given the limited opportunities in our local area, this proposal increases the hardships to those who make their livings in the commercial fishing industry. The fiscal estimate and economic impact analysis provided by the State in Attachment A fails to encompass the scope of consequences that may result from this proposal. Not only would it result in profit loss for our business, but for other local businesses, persons employed in the fishing industry and quite possibly persons who rely on local tourism to make a living.

Finally, I would like to note that we, as commercial fishermen who rely on the natural resources for our livelihood, have the greatest interest of all in keeping the fish

populations sustainable. We would not support any proposal which could or would devastate a fish population. That would not be in our best interests as a business nor as human beings who respect our environment and the resources. Fishing on Lake Superior nearly nine months out of the year, we notice changes in fish movement depending on weather, wind, temperatures and the like on a daily basis and extending over the years. We see the fish populations daily, not several weeks out of the year that State assessments are based on. So again, we most certainly would not support any laws that would negatively impact our future. I ask you, please, to take these comments into consideration as you make your decisions. Also, feel free to contact me if you have questions or request more information. Thank you for your time.

Sincerely,

*Maurine A. Halvorson* Commercial Fishing Board Member  
Maurine A. Halvorson

*C. Dean Halvorson*  
C. Dean Halvorson

*Mark N. Halvorson*  
Mark N. Halvorson

*Clifford D. Halvorson*  
Clifford D. Halvorson

Red Cliff Band of Lake Superior Chippewa

received 11/8/13

The Fiscal Estimate provided by the State is narrowly focused and largely underestimating the economic impact to Bayfield and Ashland Counties.

When developing the fiscal estimate, only state harvest was considered, and even those calculations seem low. The State commented that, "total dockside value of whitefish harvested by state commercial fishers in gillnets was approximately \$160,000 in 2011." State fishermen harvested 170,770 lbs. of whitefish with gillnets in 2011. Whitefish wholesale averaged \$1.60/lb. through most of 2013, and the economic impact needs to consider current price structure. This would put the value of the 170,770 pound catch for whitefish caught in state gillnets at \$273,232, and this does not include the harvest from the trap net fishery by state license holders. This does not include the multiplier effect of those dollars as they circulate through the counties either.

What is glaringly obvious is that the economic impact does not even attempt to address the impact to the tribal commercial fishery. In 2013, 100% of the tribal fishery in Wisconsin was by gillnet harvest. Because of the effort restrictions on gillnets that are based on the lake trout quota, a lake trout quota reduction will lead to severe reduction in tribal whitefish harvest. In 2011, Red Cliff harvested 377,407 pounds of whitefish and 74,536 pounds of lake trout. Bad River harvested 264,906 pounds of whitefish and 83,007 pounds of lake trout that same year. Why has the State not considered this harvest as part of the economic impact to the region?

A true economic impact analysis cannot simply multiply pounds harvested by wholesale price per pound. The fishing industry circulates dollars throughout the counties through employment, dock fees, equipment purchases, fuel and maintenance costs, direct sales to restaurants, etc. The State's estimate that, "the exact estimate of economic impact is unknown, but is not expected to exceed \$50,000" is almost comical in its inaccuracy. Especially since the EIA doesn't even consider the loss of tourism dollars that would occur if the recreational fishery faced emergency closure.

The Economic Impact Analysis lists dozens of entities that might be impacted and who were contacted for comment, BUT RED CLIFF AND BAD RIVER ARE NOT LISTED! How could this happen? There is a three party agreement for commercial harvest in Wisconsin waters. Does the State not remember who they share an agreement with? The quota change affects these tribal communities more directly than any other entity that was listed.

(continued from Red Cliff Band)

The following comments are being submitted regarding the Fiscal Estimate and Economic Analysis in response to the October 25, 2013 letter from Kate Strom Hiorns, Bureau of Fisheries Management in relation to amending Lake Superior lake trout harvest limits as required to the State-Tribal Lake Superior Agreement.

The Fiscal Estimate and Economic Analysis states, "The exact amount of economic impact is unknown, but is not expected to exceed \$50,000 in a fishing season." The analysis also states, "However, the result of this rule may also limit the amount of gill net effort fishers can use to target whitefish because lake trout are frequently caught in the same nets." In addition, the Economic Analysis notes, "dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$160,000 in 2011. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$40,000 and likely less because fishers can shift to using trap nets that are not subject to the same restrictions governing gill nets."

It is our position the WDNR's Fiscal Estimate and Economic Analysis grossly underestimates the economic impact of this proposed regulation to Lake Superior's commercial fishery in general and the tribe's commercial fishery in particular. **A 41% reduction in the lean lake trout harvest quota will likely have an economic impact that will far exceed \$50,000 in a fishing season.**

	Existing Quota	Proposed Quota	Change	% Change
<b>COMMERCIAL HARVEST QUOTA</b>				
<u>State Commercial Harvest</u>				
East of Bark Bay	8,600	5,300	(3,300)	-38.37%
West of Bark Bay	2,150	2,150	-	0.00%
Subtotal State Commercial	10,750	7,450	(3,300)	-30.70%
<u>Tribal Commercial Harvest and Home Use</u>				
East of Bark Bay	79,300	44,800	(34,500)	-43.51%
West of Bark Bay	700	700	-	0.00%
Subtotal Tribal Commercial	80,000	45,500	(34,500)	-43.13%
<b>TOTAL COMMERCIAL HARVEST &amp; HOME USE</b>				
Subtotal State Commercial	10,750	7,450	(3,300)	-30.70%
Subtotal Tribal Commercial/Subsistence	80,000	45,500	(34,500)	-43.13%
<b>TOTAL</b>	<b>90,750</b>	<b>52,950</b>	<b>(37,800)</b>	<b>-41.65%</b>

The economics of the Lake Superior fishery are complex and economic contributions from the industry are not adequately reflected in the current analysis. For example, the position that the proposed regulation will have little economic impact on the Lake Superior commercial fishery because, "*fishers can shift to using trap nets*" fails to consider the extensive capital investment required to convert from gill net fishing operations to trap net operations.

To accurately determine the true economic costs of the proposed Lake Superior lake trout regulation it is imperative to identify the direct costs, indirect costs, induced costs and potential displacement of those employed in the commercial fishing industry.

Estimating the direct costs should be undertaken through a focus group consisting of tribal fishermen, state fishermen, fish processors, retailers and biologists. Given the proposed reduction in harvest quotas the following questions need to be answered:

- How will the volumes of whitefish and lake trout change in relationship to harvest quota reductions and effort limitations?
- Will the regulatory changes increase operating costs and how much?
- How will the proposed regulation impact the supply of fish on both an annual and seasonal basis and the availability to produce value added products?
- How will this reduction in harvest volume impact markets and transportation costs?
- How will these regulation changes impact employment in fishing operations, fish processing plants, and retail fish operations (i.e. how many jobs will be lost)?
- How much will the proposed regulation changes impact income?

The estimation of indirect and induced economic impacts should be determined using an IMPLAN Version 3.1 model. This would enable governments and the public to ascertain how the commercial fishery supports suppliers (i.e. indirect impacts) and local economies through payroll expenditures (i.e. induced impacts). The University Extension Service has experience in conducting such assessments and would provide an independent and objective analysis.

If the focus group determines a significant displacement of fishermen, fish processors and other workers then displacement costs would also need to be identified.

DATE: November 19, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: **Attachment to background memo** on hearing approval for Board Order FH-26-12, relating to amending Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement

Peter Stevens, Lake Superior Fish Team Supervisor, provided additional information after green sheet signatures on the economic impact comments provided by Halvorson Fisheries, LLC.

Peter spoke with Maurine Halvorson on November 18, 2013, to discuss the interpretation of the rule, the reduction in harvest tags, and their analysis of economic impact. Each commercial fishing license would see a cut of only 55 additional tags (745 total per license) resulting in only 5,100 feet of fishing effort lost. This is much less than the Halvorson's assumption that each license would see cuts of an additional 300 tags and the loss of 20,000 feet more of gill net effort.

The Department wanted to clarify this point with the Halvorson Fisheries, LLC, as well as with the Natural Resources Board. The economic impact analysis form will be updated with this information as the rule process progresses.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

FH-26-13(E)

1. Type of Estimate and Analysis

Original  Updated  Corrected

2. Administrative Rule Chapter, Title and Number

Chs. NR 20 Fishing-Inland Waters Outlying Waters; and NR 25 Commercial Fishing-Outlying Waters

3. Subject

The emergency rule will implement harvest limits for the 2013-14 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior and authorizes limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits.

4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  Increase Existing Revenues  Increase Costs  
 Indeterminate  Decrease Existing Revenues  Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  Specific Businesses/Sectors  
 Local Government Units  Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

9. Policy Problem Addressed by the Rule

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2013-14 lake trout commercial harvest season.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. Lake trout harvest limits were negotiated in October 2013 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code.

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout.

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

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### 13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

A predicted continued decline in lake trout population abundances necessitates the current reductions in harvest numbers to support a sustainable lake trout fishery over the long-term. Allowing harvest at current quota and effort limits - an alternative to implementing the rule - is not biologically sustainable and could create negative economic impacts for commercial fishers.

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### 14. Long Range Implications of Implementing the Rule

Reducing quota and effort limits for commercial fishers, authorizing harvest limits on recreational fishers, and monitoring lake trout populations will support a sustainable lake trout fishery over the long-term.

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### 15. Compare With Approaches Being Used by Federal Government

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

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### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Of the four states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but there is a tribal harvest guided by the same modeling approach as Wisconsin.

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<h3>17. Contact Name</h3> <p>Peter Stevens</p>	<h3>18. Contact Phone Number</h3> <p>(715) 779-4035 Ext. 12</p>
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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout.

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses  
Dockside values of fish; commercial fishing harvest reports

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

---

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

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5. Describe the Rule's Enforcement Provisions

The rule will be enforced by Department Conservation Wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING RULES**

The statement of scope for this rule, SS 108-13, was approved by the Governor on August 13, 2013, published in Register No. 692 on August 31, 2013, and approved by the Natural Resources Board on September 25, 2013. This rule was approved by the Governor on \_\_\_\_\_.

Wisconsin Natural Resources Board proposes an order to amend ss. NR 20.20(73)(n) 4. and 25.06(1)(a), Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior.
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FH-26-13(E)

Analysis Prepared by Department of Natural Resources

1. **Statutes interpreted.** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
2. **Statutory authority.** Sections 29.014(1), 29.041, 29.519(1m)(b), 227.4, Stats.
3. **Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size and amount of gear to be used in the harvest.

Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

4. **Related statutes or rules.**  
29.973 Commercial fish reporting system

5. **Plain language analysis of the proposed rule.**  
The emergency rule is necessary to implement harvest limits for the 2013-14 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior and places reduced bag limits on recreational fishing if the recreational lake trout harvest exceeds specified limits. The rule elements are a result of regular negotiations stipulated in the State-Tribal Lake Superior Agreement.

SECTION 1 puts in place a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest during the 2013-14 fishing season exceeds 95% of the total allowable recreational lake trout harvest of 26,050 fish ( $26,050 \times 0.95 = 24,748$ ). If total lake trout harvest during that same time exceeds 98% of the total allowable recreational harvest ( $26,050 \times 0.98 = 25,529$ ), a zero bag limit would be enforced and no fish could be harvested. Recreational lake trout harvest is measured by department creel surveys during which staff gather harvest information directly from anglers.

SECTION 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior.

#### **6. Summary of and comparison with existing or proposed federal statutes and regulations.**

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

#### **7. Comparison with rules in adjacent states.**

Of the four adjacent states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but tribal harvest is guided by the same modeling approach as in Wisconsin.

#### **8. Summary of factual data and analytical methodologies.**

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The allowable lake trout harvests are reviewed by a state-tribal biological committee using the latest available data and modeling results. Based on those results and recommendations from the biological committee, the Agreement is re-negotiated as needed to change the total annual harvest of lake trout by all fishers, and possibly to address other issues related to shared harvest of lake trout and other species by state and tribal fishers.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by independent surveys conducted by the department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, these year classes were not as large as predicted. This combination of increased harvest and lower than predicted population size has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The decline in lake trout population abundances and predicted further declines necessitate the emergency harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

#### **9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.**

There would be no implementation costs for the department. State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

The decline in lean lake trout abundance in Lake Superior has been confirmed by surveys conducted by the department and has been projected by models used to set safe harvest levels. Rule changes are necessary in order to ensure a sustainable lake trout fishery over the long-term.

**10. Effects on small business.**

The proposed rule change would impact state-licensed commercial fishers, tribal commercial fishers, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

The rule will be enforced by department conservation wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

**11. Rules proposed by the Department of Veterans Affairs. No information**

**12. Agency contact person.**

Peter Stevens  
 Department of Natural Resources  
 141 S. Third Street  
 Bayfield WI, 54814  
 Telephone: (715) 779-4035 Ext: 12  
 Email: peter.stevens@wisconsin.gov

**13. Place where comments are to be submitted and deadline for submission.** Comments on this proposed rule may be submitted to the agency contact person listed above. The deadline for written comments is to be determined.

SECTION 1. NR 20.20(73)(n) 4. is amended to read:

**NR 20.20(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)**

(n) Trout and salmon	4. Lake Superior	a. Hook and line	Continuous except the open season for lake trout is December 1 to September 30	10 in total but only 5 may be salmon and only 5 may be trout, of which only 1 may be a rainbow trout, only 1 may be a brook trout and only 3 may be lake trout with only 1 lake trout longer than 25 inches; <u>when recreational lake trout harvest between December 1, 2013 and September 30, 2014 measured by department creel surveys exceeds 24,748 lake trout the lake trout bag limit is reduced to 1 and when recreational lake trout harvest during that same</u>	Rainbow trout 26, brook trout 20, other trout 15, salmon none
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				time exceeds <u>25,529 lake trout the lake trout bag limit is reduced to 0</u>	
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SECTION 2. NR 25.06(1)(a) is amended to read:

NR 25.06 **Quotas and catch fees.** (1) LAKE SUPERIOR. (a) *Lake trout.* The total allowable annual harvest of lake trout by state and tribal commercial fishers and tribal home use fishers under par. (b) during the open season in Wisconsin waters of Lake Superior east of Bark Point (WI-2) and west of Bark point (WI-1) shall be determined by the natural resources board based upon recommendations from the state/tribal biological committee which consists of state, tribal and national biological service representatives.

1. The total allowable commercial and home use harvest in the waters of Lake Superior east of Bark Point may not exceed ~~87,900~~ 50,100 lake trout. The total allowable commercial and home use harvest in waters of Lake Superior west of Bark Point may not exceed 2,850 lake trout.

2. That number of lake trout to be harvested by non-Indian licensed commercial fishers from the waters of Lake Superior east of Bark Point may not exceed ~~8,600~~ 5,300 lake trout, and from the waters of Lake Superior west of Bark Point may not exceed 2,150 lake trout.

3. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior east of Bark Point may not exceed ~~79,300~~ 44,800 lake trout. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior west of Bark Point may not exceed 700 lake trout. If the Red Cliff and Bad River bands do not reach an agreement on the method of allocating the tribal quota between them, the department may divide the quota 50% for the Bad River band and 50% for the Red Cliff band, or by any other equitable method.

4. All lake trout caught in gill nets not less than 4 7/16 inch stretch measure set in waters less than 330 feet (55 fathoms) deep shall be kept and tagged except during November 28 through May 31, live lake trout may be released. Lake trout caught in gill nets in waters 330 feet (55 fathoms) deep or deeper or in entrapping nets may be returned to the lake or kept and tagged, except that dead lake trout 25 inches or less in length caught in entrapping nets shall be kept and tagged. All lake trout, dead or alive, larger than 25 inches in length caught in entrapping nets shall be returned to the lake. All lake trout and siscowet harvested by commercial and home use fishers shall be tagged in accordance with sub. (3).

5. The department may recall tags furnished or authorized in accordance with sub. (3), when necessary to implement a quota reduction.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper, as provided in s. 227.24(1)(d), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

FH-26-12

1. Type of Estimate and Analysis

Original  Updated  Corrected

2. Administrative Rule Chapter, Title and Number

Chs. NR 20, Fishing-Inland Waters Outlying Waters, and NR 25, Commercial Fishing-Outlying Waters

3. Subject

Amending Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement: The rule would reduce the annual commercial fishing harvest limit for lake trout on Lake Superior and list potential limitations on recreational fishing limits.

4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  Increase Existing Revenues  Increase Costs  
 Indeterminate  Decrease Existing Revenues  Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  Specific Businesses/Sectors  
 Local Government Units  Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

9. Policy Problem Addressed by the Rule

The rule is being submitted to address a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior that threatens harvest capability of state-licensed commercial fishers, tribal commercial fishers, and recreational anglers.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

For comments on the economic impact of the rule, the department contacted the Wisconsin Conservation Congress, the Wisconsin Wildlife Federation, the Great Lakes Indian Fish and Wildlife Commission, Wisconsin Association of Lakes, WI Federation of Great Lakes Sport Fishing Clubs, WI Council of Sport Fishing Organizations, Musky Clubs Alliance of Wisconsin, Inc., Salmon Unlimited, Sturgeon for Tomorrow, Trout Unlimited - WI Council, Walleyes for Tomorrow, WI Bass Federation, Izaak Walton League-Wisconsin Division, Lake Michigan Fisheries Forum, WI Commercial Fisheries Association, American Fisheries Society-Wisconsin Chapter, Natural Resources Foundation of WI, Gathering Waters, River Alliance of Wisconsin, UW Sea Grant, League of WI Municipalities, WI Towns Association, WI Counties Association, NE WI Great Lakes Sport Fishermen, Great Lakes Sport Fishermen of Milwaukee, and the Lake Michigan and Lake Superior Commercial Fishing Boards.

11. Identify the local governmental units that participated in the development of this EIA.

The EIA comment period was conducted from October 25 to November 8, 2013. No local governments indicated that they would like to participate in the development of the final EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

Based on data available to the Department, minimal impact is expected for businesses or business associations. The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

The Department received two comments during the EIA comment period that suggested the impact would be greater than estimated. The comments are summarized below:

Halvorson Fisheries, LLC, (Bayfield, WI):

- In the years prior to 2013 we had received 1075 lake trout tags per license. In March of 2013, that number was reduced to 800 tags and footage was reduced by 26,442 feet of net. Based on this new proposal, each license would see cuts of an additional 300 tags and the loss of 20,000 feet more of gill net effort. The impact of this new proposal would almost certainly force us to lay off or let go employees, potentially lose clients to whom we supply fish and absolutely result in money loss in fish sales.
- The estimated dockside value of lake trout in the draft EIA is based on the fish prices in 2011, which were considerably lower than they are at present, or at any time in the past year. Furthermore, these estimates of the lake trout dockside value are not valid to our business, as we fillet all of our lake trout. Lake trout fillets, or fillets of any other type of fish, are far more profitable than the whole, dressed fish. Our business estimates a loss of \$15,000 based on the sale of lake trout fillets in 2013. This figure is just for our business with five licenses, and still is three times higher a loss than the numbers in the draft EIA for all ten state licenses! The proposed decrease in gill net footage would only amplify our business' profit loss. I calculate that a reduction of about 20,000 feet of gill net footage per license would result in a loss of 5000 pounds of whitefish and a current dockside value of \$10,000. Considering the five licenses within our business, we stand to lose around \$50,000 from the sale of whitefish. This figure is just a rough estimate based on an average of the prior years' catch, and is subject to how much fish is caught and the market value.
- Halvorson Fisheries would also be affected by cuts to tribal quotas. Numerous local restaurants depend on our business to supply them with Lake Superior lake trout and whitefish. In order to meet the demand for trout fillets from our restaurant trade and retail store, we must purchase lake trout from Native American fisherman. A reduction to tribal quota has the potential to decrease the amount of available lake trout to purchase by our business, making it impossible for us to meet the demands of restaurant orders and consumer requests. Again, our business would experience monetary loss, but so too would Native American fishermen who supply us with lake trout, and potentially the local restaurants that serve our products.
- The rule would not only result in profit loss for our business, but for other local businesses, persons employed in the fishing industry and quite possibly persons who rely on local tourism to make a living.

Red Cliff Band of Lake Superior Chippewa:

- The Fiscal Estimate provided by the State is narrowly focused and largely underestimates the economic impact to

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

Bayfield and Ashland Counties.

- When developing the fiscal estimate, only state harvest was considered, and even those calculations seem low. State fishermen harvested 170,770 lbs. of whitefish with gillnets in 2011. Whitefish wholesale averaged \$1.60/lb. through most of 2013, and the economic impact needs to consider current price structure. This would put the value of the 170,770 pound catch for whitefish caught in state gillnets at \$273,232, and this does not include the harvest from the trap net fishery by state license holders.
- The economic impact does not even attempt to address the impact to the tribal commercial fishery. In 2013, 100% of the tribal fishery in Wisconsin was by gillnet harvest. Because of the effort restrictions on gillnets that are based on the lake trout quota, a lake trout quota reduction will lead to severe reduction in tribal whitefish harvest. In 2011, Red Cliff harvested 377,407 pounds of whitefish and 74,536 pounds of lake trout. Bad River harvested 264,906 pounds of whitefish and 83,007 pounds of lake trout that same year.
- A true economic impact analysis cannot simply multiply pounds harvested by wholesale price per pound. The fishing industry circulates dollars throughout the counties through employment, dock fees, equipment purchases, fuel and maintenance costs, direct sales to restaurants, etc. The State's estimate that, "the exact estimate of economic impact is unknown, but is not expected to exceed \$50,000" is almost comical in its inaccuracy. Especially since the EIA doesn't even consider the loss of tourism dollars that would occur if the recreational fishery faced emergency closure.
- Estimating the direct economic costs should be undertaken through a focus group consisting of tribal fishermen, state fishermen, fish processors, retailers and biologists.

Response from the Department:

The Department thanks both Halvorson Fisheries, LLC, and the Red Cliff Band of Lake Superior Chippewa for their comments. The Department will work with both groups as it moves through the rule making process.

Comments received from these state and tribal commercial fishers assume the economic impact of the permanent rule is greater than the Department's estimate. The economic impact was estimated by the Department using available reported data from 2012 dockside values of lake trout and whitefish sales, as well as commercial fishing harvest reports submitted to the Department. Commercial fishers and tribes are not required to submit any additional economic information to the Department, therefore the estimate of minimal economic impact was the best analysis based on available data.

If the rule is not put in place, the estimate of negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

In addition, lake trout harvest limits were negotiated in October 2013 among the Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes are reflected in this rule. This State-Tribal Agreement amendment was agreed to by all parties. While negotiations do not preclude the Red Cliff Band from providing EIA comments, it was assumed that they were aware of the economic effects of the harvest limit when the Agreement amendment was made.

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#### 13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

A predicted continued decline in lake trout population abundances necessitates the current reductions in harvest numbers to support a sustainable lake trout fishery over the long-term. Allowing harvest at current quota limits - an alternative to implementing the rule - is not biologically sustainable and could create negative economic impacts for commercial fishers.

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#### 14. Long Range Implications of Implementing the Rule

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

Reducing quota limits for commercial fishers, authorizing harvest limits on recreational fishers, and monitoring lake trout populations will support a sustainable lake trout fishery over the long-term.

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**15. Compare With Approaches Being Used by Federal Government**

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

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**16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

Of the four states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but there is a tribal harvest guided by the same modeling approach as Wisconsin.

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**17. Contact Name**

Peter Stevens, Lake Superior Fisheries Supervisor

**18. Contact Phone Number**

715-779-4035 ext. 12

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Based on data available to the Department, minimal impact is expected for businesses or business associations. The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. The result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout.

Economic impact comments were provided during the comment period suggesting the impact to small businesses would be greater than the Department's estimate. However, if the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses  
Dockside values of fish; commercial fishing harvest reports

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

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5. Describe the Rule's Enforcement Provisions

The rule will be enforced by Department Conservation Wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No

## ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The statement of scope for this rule, SS 098-12, was approved by the Governor on December 14, 2012, published in Register No. 685 on January 14, 2012, and approved by the Natural Resources Board on February 27, 2013. This rule was approved by the Governor on \_\_\_\_\_.

Wisconsin Natural Resources Board proposes an order to amend ss. NR 20.20(73)(n) 4. and 25.06(1)(a), Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior.

FH-26-12

### Analysis Prepared by Department of Natural Resources

- 1. Statutes interpreted.** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
- 2. Statutory authority.** Sections 29.014(1), 29.041, 29.519(1m)(b), Stats.
- 3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size and amount of gear to be used in the harvest.

- 4. Related statutes or rules.**  
29.973 Commercial fish reporting system

**5. Plain language analysis of the proposed rule.**

The rule is necessary to implement lake trout commercial harvest limits. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior and places reduced bag limits on recreational fishing if the recreational lake trout harvest exceeds specified limits.

The continued, persistent decline in lake trout population abundances in the Apostle Islands vicinity of Lake Superior and predicted further declines necessitate the reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. The rule elements are a result of regular negotiations stipulated in the State-Tribal Lake Superior Agreement.

SECTION 1 puts in place a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest in a season exceeds 95% of the total allowable recreational lake trout harvest of 26,050 fish ( $26,050 * 0.95 = 24,748$ ). If total lake trout harvest in a season exceeds 98% of the total allowable recreational harvest ( $26,050 * 0.98 = 25,529$ ), a zero bag limit would be enforced and no fish could be harvested for the rest of the season. Recreational lake trout harvest is measured by department creel

surveys during which staff gather harvest information directly from anglers. The open season for recreational lake trout harvest in Lake Superior is December 1 through September 30.

SECTION 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior. The open season for commercial lake trout harvest in Lake Superior is November 28 through September 30.

**6. Summary of and comparison with existing or proposed federal statutes and regulations.**

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

**7. Comparison with rules in adjacent states.**

Of the four adjacent states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but tribal harvest is guided by the same modeling approach as in Wisconsin.

**8. Summary of factual data and analytical methodologies.**

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The allowable lake trout harvests are reviewed by a state-tribal biological committee using the latest available data and modeling results. Based on those results and recommendations from the biological committee, the Agreement is re-negotiated as needed to change the total annual harvest of lake trout by all fishers, and possibly to address other issues related to shared harvest of lake trout and other species by state and tribal fishers.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by independent surveys conducted by the department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, these year classes were not as large as predicted. This combination of increased harvest and lower than predicted population size has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The decline in lake trout population abundances and predicted further declines necessitate the harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

**9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.**

There would be no implementation costs for the department. State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

The decline in lean lake trout abundance in Lake Superior has been confirmed by surveys conducted by the department and has been projected by models used to set safe harvest levels. Rule changes are necessary in order to ensure a sustainable lake trout fishery over the long-term.

**10. Effects on small business.**

The proposed rule change would impact state-licensed commercial fishers, tribal commercial fishers, fish

wholesalers, and others whose interests or businesses are affected by commercial fishing. Based on data available to the Department, minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

Economic impact comments were provided during the economic impact analysis period suggesting the impact to small businesses would be greater than the Department's estimate. However, if the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

The rule will be enforced by department conservation wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

**11. Rules proposed by the Department of Veterans Affairs.** No information

**12. Agency contact person.**

Peter Stevens  
 Department of Natural Resources  
 141 S. Third Street  
 Bayfield WI, 54814  
 Telephone: (715) 779-4035 Ext: 12  
 Email: peter.stevens@wisconsin.gov

**13. Place where comments are to be submitted and deadline for submission.** Comments on this proposed rule may be submitted to the agency contact person listed above. The deadline for written comments is to be determined.

SECTION 1. NR 20.20(73)(n) 4. is amended to read:

NR 20.20(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)

(n) Trout and salmon	4. Lake Superior	a. Hook and line	Continuous except the open season for lake trout is December 1 to September 30	10 in total but only 5 may be salmon and only 5 may be trout, of which only 1 may be a rainbow trout, only 1 may be a brook trout and only 3 may be lake trout with only 1 lake trout longer than 25 inches; <u>when recreational lake trout harvest during a season measured by department creel surveys exceeds 24,748 lake trout the lake</u>	Rainbow trout 26, brook trout 20, other trout 15, salmon none
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				<u>trout bag limit is reduced to</u> <u>1 and when recreational</u> <u>lake trout harvest during</u> <u>that same time exceeds</u> <u>25,529 lake trout the lake</u> <u>trout bag limit is reduced to</u> <u>0</u>	
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SECTION 2. NR 25.06(1)(a) is amended to read:

NR 25.06 **Quotas and catch fees.** (1) LAKE SUPERIOR. (a) *Lake trout.* The total allowable annual harvest of lake trout by state and tribal commercial fishers and tribal home use fishers under par. (b) during the open season in Wisconsin waters of Lake Superior east of Bark Point (WI-2) and west of Bark point (WI-1) shall be determined by the natural resources board based upon recommendations from the state/tribal biological committee which consists of state, tribal and national biological service representatives.

1. The total allowable commercial and home use harvest in the waters of Lake Superior east of Bark Point may not exceed ~~87,900~~ 50,100 lake trout. The total allowable commercial and home use harvest in waters of Lake Superior west of Bark Point may not exceed 2,850 lake trout.

2. That number of lake trout to be harvested by non-Indian licensed commercial fishers from the waters of Lake Superior east of Bark Point may not exceed ~~8,600~~ 5,300 lake trout, and from the waters of Lake Superior west of Bark Point may not exceed 2,150 lake trout.

3. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior east of Bark Point may not exceed ~~79,300~~ 44,800 lake trout. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior west of Bark Point may not exceed 700 lake trout. If the Red Cliff and Bad River bands do not reach an agreement on the method of allocating the tribal quota between them, the department may divide the quota 50% for the Bad River band and 50% for the Red Cliff band, or by any other equitable method.

4. All lake trout caught in gill nets not less than 4 7/16 inch stretch measure set in waters less than 330 feet (55 fathoms) deep shall be kept and tagged except during November 28 through May 31, live lake trout may be released. Lake trout caught in gill nets in waters 330 feet (55 fathoms) deep or deeper or in entrapping nets may be returned to the lake or kept and tagged, except that dead lake trout 25 inches or less in length caught in entrapping nets shall be kept and tagged. All lake trout, dead or alive, larger than 25 inches in length caught in entrapping nets shall be returned to the lake. All lake trout and siscowet harvested by commercial and home use fishers shall be tagged in accordance with sub. (3).

5. The department may recall tags furnished or authorized in accordance with sub. (3), when necessary to implement a quota reduction.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)